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business sends to a consumer, from a slim book of poetry to a multi-million dollar yacht.

Gail Cole • Sep. 19, 2016



What *can't* be delivered today? For the right price, consumers can have a car delivered across the country, a sofa delivered from granny's attic, and a gourmet meal delivered from a starred restaurant. Some businesses provide their own delivery services, some deliver via common carrier, and some partner with a third party to deliver their goods. No matter what the scenario, it's essential to get sales and use tax right.

Unfortunately, tax laws and policies on delivery charges vary from state to state, and sometimes from transaction to transaction.

'Fast' food

Modern take-out and delivery services are said to have begun at a [Chinese restaurant](#) in 1920s Los Angeles. They began to flourish in the late 1950s, when they were welcomed

by the crowd that embraced cake mixes and TV dinners. And today, food is one of the

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national market. Even Amazon has entered the fray (perhaps in anticipation of [food delivery by drone](#)).

To those awaiting their food, delivery may seem simple: meals ordered with a call or a click magically appear after (hopefully not too much) time has passed. But behind the scenes, businesses work hard to process sales. Getting any part of an order wrong can lead to disgruntled customers and the dreaded unfavorable online reviews. If the error involves sales tax, a business can face penalties and fines or even find itself in court, as has the large pizza franchise that's been [dealing with class action suits](#) in two states for allegedly improperly applying tax to delivery charges.

Taxability rules vary from state to state, and some can seem quite quirky. In Iowa, for example, delivering food that's ready to eat is considered to be catering, and catering services are taxable. The [Iowa Department of Revenue](#) specifies that "this includes hot, delivered pizza." However, "A person who makes pies and cakes and delivers them is not considered a caterer, and those sales are not taxable." Try and make sense of that one.

An inseparable link

Delivery charges don't just pertain to food. They can be slapped on anything a business sends to a consumer, from a slim book of poetry to a multi-million dollar yacht.

Recently, the Illinois Department of Revenue amended its shipping and handling regulation in response to the Illinois Supreme Court decision in *Kean v. Wal-Mart Stores, Inc.* (a class action suit regarding the taxability of charges for delivering a trampoline). The updated regulation makes clear that, as of April 1, 2016, shipping fees are subject to sales and use tax when there is an *inseparable link* between the sale and the shipping incurred by the customer.

In the amended regulation, an inseparable link exists when either of the following is

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as when the customer is offered the option to pick up the purchase, or a free shipping option is available and offered.

The Illinois regulation also clarifies the department's stance on mixed transactions, sales that include both taxable and nontaxable sales, or sales that are taxed at different rates (for example, the lower rates that Illinois applies to sales of food, drugs and medical appliances). So long as the invoice separately states delivery charges for each item, tax may be calculated for each separately listed item. However, if the invoice contains a lump sum delivery fee, "the lump sum delivery charge will not be taxable if the selling price of the items for which delivery is nontaxable is greater than the selling price of the items for which delivery is taxable," and vice versa. [Regulation §130.415](#) provides examples and more details.

In Michigan, however, taxability often hinges on when the transfer of ownership occurred, and whether or not a seller is "simultaneously engaged in a nontaxable delivery service." According to the [Michigan Department of Treasury](#), "Delivery charges on merchandise delivered by a seller who is not engaged in a separate delivery service business as defined above are taxable if the charges are incurred prior to the transfer of ownership. Delivery charges are not taxable if incurred after the transfer of ownership."

Separately stated

Whether or not delivery charges are separately stated also comes into play in determining taxability in Missouri. The [Missouri Department of Revenue](#) recently announced that a Missouri Supreme Court decision has affected the taxability of delivery charges, noting, "If your business is not currently collecting and remitting tax on delivery charges, this decision may require you to begin doing so."

The court opinion makes a distinction between sales price and sales transaction: "Taxability does not depend on whether the parties intended the charge for the service to be part of the sales *price*; taxability depends on whether the parties intended the

provision of the service to be part of the sales *transaction*.” It’s a subtle but important

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factors to be used to determine whether or not a delivery service is intended to be part of the sale. These include: when title passes from the seller to the buyer; who controls the cost and means of delivery; and whether the seller derives financial benefit from the delivery. [Read more about taxable separately stated delivery charges in Missouri.](#)

But what’s true in Missouri is not true everywhere. In [Connecticut](#), for example, shipping and delivery charges connected to the sale of taxable tangible personal property or services are taxable “even if the charges are separately stated” and “regardless of whether the shipping or delivery is provided by the seller or by a third party.”

Sorting it all out

Delivery charges are increasingly part of our new reality — a world in which there are more online shops, more food delivery, and more reasons to stay at home and click “Deliver” than ever before. Companies that don’t provide some sort of delivery option may find themselves quickly outpaced by competitors that do. But offering delivery services involves more than obtaining a truck or a building relationships with common carriers; it means getting sales and use tax right.

Gail is a sales tax expert for [Avalara](#) with a penchant for digging through the depths of DOR sites and discovering and reporting rate changes across the country.

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